

## Department of Permitting and Inspections

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## MEMORANDUM

**To:** The Design Advisory Board  
**From:** Mary O'Neil, AICP, Principal Planner  
**RE:** ZP21-0358CA/CU; 40 Kingsland Terrace  
**Date:** October 27, 2020, **November 24, 2020**

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### **New information in red.**

**File:** ZP21-0358CA/CU  
**Location:** 40 Kingsland Terrace  
**Zone:** RL **Ward:** 6S  
**Parking District:** Neighborhood  
**Date application accepted:** October 1, 2020  
**Applicant/ Owner:** Katie Menson, Kellen Brumsted  
**Request:** Demolish existing garage; construct new garage with 616 sf. Accessory Dwelling Unit (ADU.)

### **Background:**

- **Zoning Permit 20-0762FC;** fencing. Approved March 2020.
- **Zoning Permit 19-0905CA;** install garage door. Approved May 2019. Application withdrawn.
- **Zoning Permit 09-173CA;** two storey rear addition, rear decks and patios to be removed. Approved September 2008.
- **Zoning Permit 90-085;** construct kitchen and deck addition. Approved March 1990.
- **Request to the ZBA for a variance from the side yard setback** for the purpose of constructing a greenhouse. Hearing dates October 28, November 18 and December 2, 1982. Variance request **denied** by ZBA, January 1983.
- **Zoning Permit 81-498;** stockade fence. Approved May 1981.
- **Zoning Permit 79-497;** take in 2 persons to fill existing two bedrooms as roomers. Approved August 1979.
- **Zoning Permit (n.n.);** install driveway gate. Approved May 1978.



- **Zoning Permit (n.n.);** erect stockade fence in rear yard. Approved May 1977.

**Overview:** The applicants propose to demolish an existing garage (listed within the South Union Street Historic District, on the National Register of Historic Places) and replace it with a new garage/ADU. As demolition of an historic building is included, the project is subject to Conditional Use review by the Development Review Board.

**Please note:** the proposed replacement building is within a required rear yard setback, exceeding the footprint of the existing garage. The applicants are requesting a variance from the required rear yard setback.

DAB meeting October 27, 2020:

**Motion by Ron Wanamaker:** I move we **table** the application to give the applicant time to:

- 1) assemble photographic evidence of the building proposed to be demolished, and;
- 2) provide evidence of a conservation easement or other restrictions on the rear yard that would support the variance request.

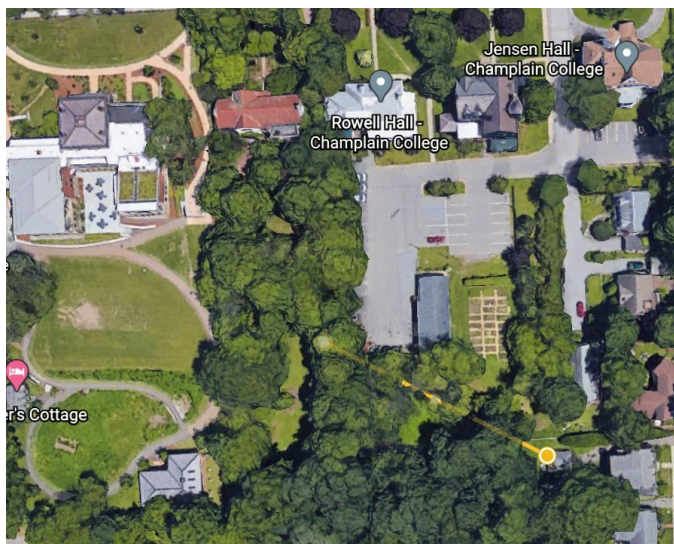
2<sup>nd</sup> – Jay White

**Vote 3-0**

**Motion carries.**

On November 11, 2020, the applicant's contractor forwarded a garage inspection and structural evaluation report, a cost estimate for work on the existing garage, and several Civil plans relating to the 2008 permitting of the Perry Hall addition as support for the applicant's variance request relative to rear yard setback. Those plans are attached. While the engineer's structural analysis defines a failed foundation and concomitant wall deflection, the report finalizes by indicating the *"wood framed superstructure can be restored to full use and function with limited repair and reinforcement."*

The associated civil plans reflect an instrument granted by 267 South Willard Street owners to allow Champlain College a 15' wide easement allowing stormwater infrastructure to pass over their lot and connect with another Champlain property at 275 South Willard Street. It must be noted that this agreement in no way affects 40 Kingsland Terrace and, in fact, is located some



230+ feet away from the subject garage. There is no identifiable link between the function of the stormwater easement and the property at 40 Kingsland Terrace. Staff finds the materials unrelated and insufficient evidence to warrant consideration of a variance to a required rear yard setback for a replacement structure at 40 Kingsland Terrace.

### **Part 1: Land Division Design Standards**

No land division is proposed. Not applicable.

## **Part 2: Site Plan Design Standards**

### **Sec. 6.2.2 Review Standards**

#### **(a) Protection of Important Natural Features:**

There is a landscaping hedge to the east, and (from aerial images) a mature tree to the west of the development site. The application does not include any tree removal or regrading of the site.

#### **(b) Topographical Alterations:**

No topographical alterations are included within the application plans.

#### **(c) Protection of Important Public Views:**

There are no protected views from or across the site. Not applicable.

#### **(d) Protection of Important Cultural Resources:**

*Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Archeological sites likely to yield information important to the city's or the region's pre-history or history shall be evaluated, documented, and avoided whenever feasible. Where the proposed development involves sites listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8(b).*

See Section 5.4.8, below.

#### **(e) Supporting the Use of Renewable Energy Resources:**

No part of this application would preclude the use of wind, water, solar, geothermal, or other renewable energy resources.

#### **(f) Brownfield Sites:**

40 Kingsland Terrace is not listed on the Department of Environmental Conservation's list of Brownfield sites. Not applicable.

#### **(g) Provide for nature's events:**

*Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. All development and site disturbance shall follow applicable city and state erosion and stormwater management guidelines in accordance with the requirements of Art 5, Sec 5.5.3.*

An EPSC plan has been forwarded to the Stormwater engineering division for review. Their written approval will be a condition of any permit.

*Design features which address the effects of rain, snow, and ice at building entrances, and to provisions for snow and ice removal or storage from circulation areas shall also be incorporated.*

A door on the west elevation is sheltered by an overhanging second story deck. The south entrance is within a small entry alcove, also providing shelter to residents.

#### **(h) Building Location and Orientation:**

The proposed replacement building is situated behind the primary residence; consistent with accessory structures. The principal entrance faces the front (south). A **continuing** issue is encroachment within a required rear yard setback; failing to meet dimensional standards of the ordinance.

**(i) Vehicular Access:**

Vehicular access is proposed to continue as existing; from Kingsland Terrace. The driveway is proposed to be widened (although the plan does not provide that dimension.) Driveways are limited to 18' in width.

**(j) Pedestrian Access:**

The plan assumes pedestrian access from the driveway. The driveway should physically isolate a pedestrian path to separate vehicular circulation from pedestrian.

**(k) Accessibility for the Handicapped:**

ADA jurisdiction is with the building inspector.

**(l) Parking and Circulation:**

The existing driveway will remain, albeit widened at the point to connection to the new garage/ADU. The required 2 parking spaces will be met with one in the new garage and one in front of it. The Zoning Amendment relative to ADUs eliminated the requirement for an additional parking space for the new unit.

**(m) Landscaping and Fences:**

No landscaping plan has been submitted with the application. The applicant shall provide an intended planting schedule and/or fencing changes prior to review by the Development Review Board.

**(n) Public Plazas and Open Space:**

There is no requirement for a public plaza with this application. The rear yard will provide reasonable open space for the enjoyment of the residents.

**(o) Outdoor Lighting:**

*Where exterior lighting is proposed the applicant shall meet the lighting performance standards as per Sec 5.5.2.*

Recessed lighting is proposed for the entryway porch, under the westerly deck and at the 2<sup>nd</sup> story door. Modeled images and elevations show a gooseneck style lamp over the garage door. All are of residential character and will downlight the immediately area.

**(p) Integrate infrastructure into the design:**

*Exterior storage areas, machinery and equipment installations, service and loading areas, utility meters and structures, mailboxes, and similar accessory structures shall utilize setbacks, plantings, enclosures and other mitigation or screening methods to minimize their auditory and visual impact on the public street and neighboring properties to the extent practicable.*

*Utility and service enclosures and screening shall be coordinated with the design of the principal building, and should be grouped in a service court away from public view. On-site utilities shall be place underground whenever practicable. Trash and recycling bins and dumpsters shall be located, within preferably, or behind buildings, enclosed on all four (4) sides to prevent blowing trash, and screened from public view.*

A mailbox is proposed within the front entry porch (although it is not clear whether the postal carrier will walk that far back on the lot to deliver mail.) A meter pack is illustrated on the easterly elevation. All utilities must be undergrounded.



*Any development involving the installation of machinery or equipment which emits heat, vapor, fumes, vibration, or noise shall minimize, insofar as practicable, any adverse impact on neighboring properties and the environment pursuant to the requirements of Article 5, Part 4 Performance Standards.*

There are no identified nuisance impacts that might emit heat, vapor, fumes, vibration, or noise. Not applicable.

### **Part 3: Architectural Design Standards**

#### **Sec. 6.3.2 Review Standards**

##### **(a) Relate development to its environment:**

###### **1. Massing, Height and Scale:**



The proposed gambrel-roofed building is larger than the existing garage it proposes to replace; but reflects a relationship to the principal dwelling in style. The location behind the single family home and at the end of a dead-end street reduces the visual impacts of the larger structure.

###### **2. Roofs and Rooflines.**

The Gambrel roof with matching dormers looks a great deal like the existing single family home in design and scale.

###### **3. Building Openings**

Windows are either double hung or awning with muntin patterns recalling the principal home. No spec sheet has been provided for the entry doors. The garage doors look to resemble paired carriage house doors.



Principal structure, 40 Kingsland Terrace

##### **(b) Protection of Important Architectural Resources:**

*Burlington's architectural and cultural heritage shall be protected through sensitive and respectful redevelopment, rehabilitation, and infill. Where the proposed development involves buildings listed or eligible for listing on a state or national register of historic places, the applicant shall meet the applicable development and design standards pursuant to Sec. 5.4.8. The introduction of new buildings to a historic district listed on a state or national register of historic places shall make every effort to be compatible with nearby historic buildings.*

See Section 5.4.8.

##### **(c) Protection of Important Public Views:**

There are no protected important public views from this location. Not applicable.

**(d) Provide an active and inviting street edge:**



There is no visibility (from Google images) of this replacement structure from the public right-of-way. (See image, left.)

**(e) Quality of materials:**

*All development shall maximize the use of highly durable building materials that extend the life cycle of the building, and reduce maintenance, waste, and environmental impacts. Such materials are particularly important in certain highly trafficked locations such as along major streets,*

*sidewalks, loading areas, and driveways. Efforts to incorporate the use of recycled content materials and building materials and products that are extracted and/or manufactured within the region are highly encouraged.*

Sheathing is proposed to be wood clapboard with wood trim. Windows are aluminum clad. The deck will feature a cable guardrail with wood cap.

*Owners of historic structures are encouraged to consult with an architectural historian in order to determine the most appropriate repair, restoration or replacement of historic building materials as outlined by the requirements of Art 5, Sec. 5.4.8.*

This is a replacement building for one listed on the National Register of Historic Resources; but it is not a reconstruction. It is entirely new design and fabrication that does not intend to replicate the original building. See Section 5.4.8, below.

**(f) Reduce energy utilization:**

All new construction is required to meet the Guidelines for Energy Efficient Construction per the requirements of Article VI, Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.

**(g) Make advertising features complementary to the site:**

No signage is included with this application. Not applicable.

**(h) Integrate infrastructure into the building design:**

See Section 6.2.2. (p), above.

**(i) Make spaces secure and safe:**

New construction must meet all applicable building and life safety code as defined by the building inspector and fire marshal.

**Sec. 5.4.8 Historic Buildings and Sites**

*The City seeks to preserve, maintain, and enhance those aspects of the city having historical, architectural, archaeological, and cultural merit. Specifically, these regulations seek to achieve the following goals:*

*To preserve, maintain and enhance Burlington's historic character, scale, architectural integrity, and cultural resources;*

*To foster the preservation of Burlington's historic and cultural resources as part of an attractive, vibrant, and livable community in which to live, work and visit;*  
*To promote a sense of community based on understanding the city's historic growth and development, and maintaining the city's sense of place by protecting its historic and cultural resources; and,*  
*To promote the adaptive re-use of historic buildings and sites.*

*(a) Applicability:*

*These regulations shall apply to all buildings and sites in the city that are listed, or eligible for listing, on the State or National Register of Historic Places.*

40 Kingsland Terrace (home and garage, Resources 28 and 28A) are within the South Union Street Historic District on the National Register of Historic Resources. See attached narrative. Therefore, the following standards apply:

*(b) Standards and Guidelines:*

*The following development standards, following the Secretary of the Interior's Standards for the Treatment of Historic Properties, shall be used in the review of all applications involving historic buildings and sites subject to the provisions of this section and the requirements for Design Review in Art 3, Part 4. The Secretary of the Interior's Standards are basic principles created to help preserve the distinctive character of a historic building and its site. They are a series of concepts about maintaining, repairing and replacing historic features, as well as designing new additions or making alterations. These Standards are intended to be applied in a reasonable manner, taking into consideration economic and technical feasibility.*

1. *A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.*

No alterations are proposed to the principal structure within this application. The rear garage, constructed c. 1923, will be demolished and replaced with a much larger structure. Although the new building will also serve as a garage, the demolition of the original is a loss of original materials, features, spaces and spatial relationships that characterize the property.

2. *The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.*

Building demolition is the opposite of retention and preservation.

3. *Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.*

The existing, small scale accessory structure is distinctly an element of its period of construction. Its demolition and replacement with a much larger building that mimics the style and size of the original home is contrary to this standard.

4. *Changes to a property that have acquired historic significance in their own right will be retained and preserved.*

Demolition is contrary to retention and preservation.

5. *Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.*  
Demolition does not afford the opportunity to retain any such features or finishes.
6. *Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials recognizing that new technologies may provide an appropriate alternative in order to adapt to ever changing conditions and provide for an efficient contemporary use. Replacement of missing features will be substantiated by documentary and physical evidence.*  
The proposal is not based in repair or replacement of deteriorated historic features, but wholesale building removal and replacement with a larger structure. **The submitted report of Roland Van Cyk, PE, identifies the failure of the garage's foundation, but asserts the wood superstructure can be restored to full use and function with limited repair and/or reinforcement.**  
The new features will bear little relationship to the existing accessory structure.
7. *Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.*  
Demolition is the greater caliber of destructive physical treatment.
8. *Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.*  
No archaeological resources have been identified at this location. If discovery is made during the redevelopment, construction will cease while appropriate authorities are notified and resources are evaluated, assessed, and appropriate disposition determined.
9. *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.*  
New construction proposed here is grounded in the removal of a listed historic structure. While an attractive structure, it is not compatible with the historic size, scale proportion and massing of the original building it replaces.
10. *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*  
A new accessory structure behind the principal building at 40 Kingsland Terrace will not diminish the historic integrity of that residential structure; but in every sense it will eliminate the essential form and integrity of the existing garage. Absent reconstruction matching its form, details and integrity, the development cannot be determined to be reversible.

**Section 5.4.8 (d) (below) details the requirements for review by the Development Review Board of a proposed demolition of a listed historic structure. It is included here for Design Advisory Board understanding and input.**



**(d) Demolition of Historic Buildings:**

*The purpose of this subsection is:*

- *To discourage the demolition of a historic building, and allow full consideration of alternatives to demolition, including rehabilitation, adaptive reuse, resale, or relocation;*
- *Provide a procedure and criteria regarding the consideration of a proposal for the demolition of a historic building; and,*
- *To ensure that the community is compensated for the permanent loss of a historic resource by a redevelopment of clear and substantial benefit to the community, region or state.*

**1. Application for Demolition.**

*For demolition applications involving a historic building, the applicant shall submit the following materials in addition to the submission requirements specified in Art. 3:*

- A. A report from a licensed engineer or architect who is experienced in rehabilitation of historic structures regarding the soundness of the structure and its suitability for rehabilitation;*

*See attached memorandum from Roland VanDyk, PE.*

- B. A statement addressing compliance with each applicable review standard for demolition;*

*The responses to subsection 2, below will be required for DRB review.*

- C. Where a case for economic hardship is claimed, an economic feasibility report prepared by an architect, developer, or appraiser, or other person experienced in the rehabilitation and adaptive reuse of historic structures that addresses:*

*(i) the estimated market value of the property on which the structure lies, both before and after demolition or removal; and,*

*(ii) the feasibility of rehabilitation or reuse of the structure proposed for demolition or partial demolition;*

*The applicant has not claimed economic hardship; but a comparative analysis has been provided by the contracting firm for foundation repair and design services. See Preliminary/viability estimate from Lewis Creek Builders.*

- D. A redevelopment plan for the site, and a statement of the effect of the proposed redevelopment on the architectural and historical qualities of other structures and the character of the neighborhood around the sites;*

*The purpose of this application is redevelopment of the site. There has been no submission addressing how the proposed redevelopment effects the architectural and historical qualities of other structures or the character of the neighborhood around the site.*

*and,*

- E. Elevations, drawings, plans, statements, and other materials which satisfy the submission requirements specified in Art. 3, for any replacement structure or structures to be erected or constructed pursuant to a development plan.*

Elevations, drawings, and plans have been submitted further defining the intended replacement structure.

## **2. Standards for Review of Demolition.**

*Demolition of a historic structure shall only be approved by the DRB pursuant to the provisions of Art. 3, Part 5 for Conditional Use Review and in accordance with the following standards:*

- A. The structure proposed for demolition is structurally unsound despite ongoing efforts by the owner to properly maintain the structure;*

The submitted engineer's report confirms foundational failure and structural deflection. There are no building permits on file for structural work on the garage. A zoning permit application to replace the garage door was withdrawn in 2019.

*or,*

- B. The structure cannot be rehabilitated or reused on site as part of any economically beneficial use of the property in conformance with the intent and requirements of the underlying zoning district; and, the structure cannot be practicably moved to another site within the district;*

The application has not explored rehabilitation and reuse of the existing structure. There is no evidence that structural relocation has been considered.

*or,*

- C. The proposed redevelopment of the site will provide a substantial community-wide benefit that outweighs the historic or architectural significance of the building proposed for demolition.*

The DRB will be tasked with analyzing the existing structure versus a proposal to create a new dwelling unit in a replacement garage to ascertain whether there is a substantial community-wide benefit that outweighs the significance of the existing building.

*And all of the following:*

- D. The demolition and redevelopment proposal mitigates to the greatest extent practical any impact to the historical importance of other structures located on the property and adjacent properties;*

The applicants will need to respond to this standard.

- E. All historically and architecturally important design, features, construction techniques, examples of craftsmanship and materials have been properly documented using the applicable standards of the Historic American Building Survey (HABS) and made available to historians, architectural historians and others interested in Burlington's architectural history;*

While the existing garage may not rise to the requirement of HABS recordation, photodocumentation of the existing building will need to be provided for the zoning record.

*and,*

*F. The applicant has agreed to redevelop the site after demolition pursuant to an approved redevelopment plan which provides for a replacement structure(s).*

*(i) Such a plan shall be compatible with the historical integrity and enhances the architectural character of the immediate area, neighborhood, and district;*

The DAB and DRB must discern the compatibility of the proposed replacement structure to meet this requirement.

*(ii) Such plans must include an acceptable timetable and guarantees which may include performance bonds/letters of credit for demolition and completion of the project;*

Any approved zoning permit will carry a timeline for completion, and will run simultaneous to the standard, below.

*and,*

*(iii) The time between demolition and commencement of new construction generally shall not exceed six (6) months.*

This will be a condition of any approval.

*This requirement may be waived if the applicant agrees to deed restrict the property to provide for open space or recreational uses where such a restriction constitutes a greater benefit to the community than the property's redevelopment.*

The applicant has not offered to deed-restrict the property for open space or recreational uses. Not applicable.

### 3. Deconstruction: Salvage and Reuse of Historic Building Materials.

*The applicant shall be encouraged to sell or reclaim a structure and all historic building materials, or permit others to salvage them and to provide an opportunity for others to purchase or reclaim the building or its materials for future use. An applicant may be required to advertise the availability of the structure and materials for sale or salvage in a local newspaper on at least three (3) occasions prior to demolition.*

Salvage and reuse of building materials is encouraged where public safety allows.

### **Items for the Board's consideration:**

1. The submitted Civil plans for the easement agreement between 251, 267 and 275 South Willard Street have no bearing on this property, and carry no weight in the applicant's request for a variance from the required 25% rear yard setback.

2. The applicant has not compiled a complete set of photographic evidence of the garage proposed to be demolished; a request made by this Board October 27, 2020.
3. Section 5.4.8 (d) of the Comprehensive Development Ordinance (Demolition of Historic Structures, 2. Standards of Review of Demolition) will have additional requirements for DRB review. Among them is a demonstration that the proposed redevelopment of the site will provide a substantial community-wide benefit that outweighs the historic or architectural significance of the building proposed for demolition. The applicant is encouraged to prepare submission materials and responses for those individual Standards for Review.
4. The plan does not meet required dimensional standards regarding rear yard setback. As proposed, the project cannot be approved. The applicant has not yet demonstrated that there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to this property that prevent development consistent with the standards of the ordinance. See variance standards in Section 12.1.1
5. A segregated pedestrian path shall be introduced to the new structure to separate vehicular and pedestrian traffic. A revised site plan has not been provided.
6. Driveways are limited to 18' in width.
7. No landscaping plan has been submitted with the application. The applicant shall provide an intended planting schedule and/or fencing changes prior to review by the Development Review Board. None received as of 11.16.2020.
8. All utilities must be undergrounded.
9. All new construction is required to meet the Guidelines for Energy Efficient Construction per the requirements of Article VI, Energy Conservation, Section 8 of the City of Burlington Code of Ordinances.
10. Approval of the Erosion Prevention and Sediment Control Plan will be a condition of any approval.
11. Standard Conditions for an ADU will be included if approved.
12. Standard Permit Conditions 1-15 if approved.